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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-514*

13 **JO CYNTHIA DE JESUS SILVA**
1456 E. Lugonia Ave.
Redlands, CA 92374

A C C U S A T I O N

15 Registered Nurse License No. 774665

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs (Board).

22 2. On or about June 3, 2010, the Board issued Registered Nurse License No. 774665 to
23 Jo Cynthia De Jesus Silva (Respondent). The Registered Nurse License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless
25 renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
3 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
4 himself or herself, any other person, or the public or to the extent that such use impairs his or her
5 ability to conduct with safety to the public the practice authorized by his or her license.

6 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
7 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
8 or the possession of, or falsification of a record pertaining to, the substances described in
9 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
10 thereof. . . ."

11 9. Section 2764 provides that the expiration of a license shall not deprive the Board of
12 jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision
13 imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an
14 expired license at any time within eight (8) years after the expiration.

15 **REGULATORY PROVISIONS**

16 10. California Code of Regulations, title 16, section 1444 states, in pertinent part:

17 "A conviction or act shall be considered to be substantially related to the qualifications,
18 functions or duties of a registered nurse if to a substantial degree it evidences the present or
19 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
20 safety, or welfare. . . ."

21 **CONTROLLED SUBSTANCE**

22 11. Phentermine, a stimulant, is classified as a Schedule IV controlled substance pursuant
23 to Health and Safety Code section 11057, subdivision (f)(4), and is a dangerous drug within the
24 meaning of section 4022.

25 **COST RECOVERY**

26 12. Section 125.3 provides that the Board may request the administrative law judge to
27 direct a licensee found to have committed a violation or violations of the licensing act to pay a
28 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially Related Crime)**

3 13. Respondent is subject to disciplinary action under sections 490 and 2761,
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that
5 on or about December 8, 2011, Respondent was convicted of a crime substantially related to the
6 qualifications, functions or duties of a registered nurse which to a substantial degree evidences
7 her present or potential unfitness to practice in a manner consistent with the public health, safety,
8 or welfare, as follows:

9 a. On or about December 8, 2011, after pleading guilty, Respondent was convicted of
10 one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an equal to or
11 greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled *The People*
12 *of the State of California v. Jo Cynthia De Jesus Silva* (Super. Ct. San Bernardino County, 2011,
13 No. TSBN1101923). The Court sentenced Respondent to two (2) days in jail, placed her on 36
14 months probation, and ordered her to complete a Nine (9) Month First Offender Alcohol
15 Program.

16 b. The circumstances underlying the conviction are that on or about March 18, 2011,
17 Respondent drove a motor vehicle and caused a single-vehicle accident. Police responded to the
18 scene and immediately suspected that Respondent was under the influence of alcohol. Field
19 sobriety tests were then administered, which Respondent failed. Respondent was placed under
20 arrest and taken into custody. Shortly thereafter, a blood test revealed Respondent's blood
21 alcohol content (BAC) to be 0.24%, and the presence of the drug Phentermine in her system.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Alcohol Related Conviction)**

24 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a),
25 and 2762, subdivision (c), in that on or about December 8, 2011, Respondent sustained a criminal
26 conviction involving the use of alcoholic beverages. Complainant refers to and by this reference
27 incorporates the allegations set forth above in paragraph 12, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol/Drugs)**

3 15. Respondent is subject to disciplinary action under sections 2761, subdivision (a),
4 and 2762, subdivision (b), on the grounds of unprofessional conduct, in that on or about March
5 18, 2011, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious
6 to herself or others. Complainant refers to and by this reference incorporates the allegations set
7 forth above in paragraph 12, as though set forth fully.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct / Violate Act)**

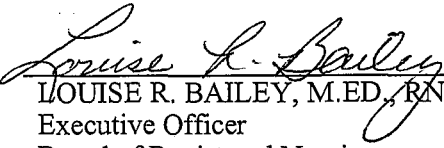
10 16. Respondent is subject to disciplinary action under section 2761, subdivision (a) and /
11 or (d), in that Respondent committed acts of unprofessional conduct, and / or acts violating the
12 Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations set
13 forth above in paragraphs 12 - 14, inclusive, as though set forth fully.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board issue a decision:

- 17 1. Revoking or suspending Registered Nurse License No. 774665, issued to Jo Cynthia
18 De Jesus Silva;
- 19 2. Ordering Jo Cynthia De Jesus Silva to pay the Board the reasonable costs of the
20 investigation and enforcement of this case, pursuant to section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

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23 DATED: December 24, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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